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January 30, 2002

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit - Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001



RE: Finance Docket No. 33995 *204649*
SF&L Railway, Inc.--Acquisition And Operation Exemption—
Toledo, Peoria & Western Railway Corporation—Between La Harpe and Peoria, IL
and
Finance Docket No. 33996
Kern W. Schumacher and Morris H. Kulmer— *204650*
Continuance In Control Exemption--SF&L Railway, Inc.

Dear Secretary Williams:

Enclosed herewith are an original and eleven copies of the Keokuk Junction Railway Co.'s Reply to Petition to Reject of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer. Please date stamp the eleventh copy and return it to the messenger for return to me.

If you have any questions about this matter, please contact me at your convenience.

ENTERED
Office of the Secretary

JAN 31 2002

Part of
Public Record

Sincerely,

William A. Mullins

Enclosures

cc: All known parties of record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33995

**SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
BETWEEN LA HARPE AND PEORIA, IL**

Finance Docket No. 33996

**KERN W. SCHUMACHER AND MORRIS H. KULMER
--CONTINUANCE IN CONTROL EXEMPTION--
SF&L RAILWAY, INC.**

**KEOKUK JUNCTION RAILWAY CO.'S
REPLY TO PETITION TO REJECT OF
SF&L RAILWAY, INC., KERN W. SCHUMACHER
AND MORRIS H. KULMER**



Petitioner Keokuk Junction Railway Co. ("KJRY"), by its counsel, hereby replies to the "Petition to Reject" ("Petition") of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer (collectively "Respondents"), filed with the Surface Transportation Board ("Board") on January 29, 2002. Respondents have provided the Board with no basis to strike KJRY's "Rebuttal to Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer" ("Rebuttal"). Further, there is no basis for granting Respondents leave to file "surrebuttal" as an alternative remedy. The Board should deny the Petition in its entirety, as Respondents are not entitled to any relief.

FACTUAL BACKGROUND

On March 6, 2001, KJRY filed its Petition to Revoke the notices of exemption filed by Respondents in the captioned dockets. KJRY believed at that time that Respondents had no intention of operating their acquisition of 70+ miles of railroad from Toledo, Peoria & Western Railway Corporation ("TP&W") as a shortline railroad, but rather intended to discourage shipments of freight on the line in order to pursue abandonment and scrapping of the rail, possibly by its rail scrapping affiliate, A&K Railroad Materials, Inc. ("A&K"). After Respondents initially resisted any of KJRY's efforts to conduct discovery, the Board ordered Respondents to participate in discovery, and the documents produced and admissions made by A&K's principles amply confirmed KJRY's concerns. A host of communities and employees have joined in calling for revocation of the notices of exemption.

After reviewing the materials produced by Respondents and TP&W in discovery, KJRY filed its Supplement to the Petition to Revoke on December 12, 2001 ("Supplement"). Respondents then filed a "Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer" ("Reply") on January 11, 2002. In the Reply, Respondents sought to explain away the many damaging facts presented by KJRY in its Supplement, and to otherwise distance themselves from the shocking rate increases and reduced service that have plagued their acquisition since it was announced in January of 2001. On January 28, 2002, KJRY filed its Rebuttal, well within the twenty day period allowed for such pleadings by 49 C.F.R. § 1104.13(a).

On January 29, 2002, Respondents served their Petition, seeking to deny KJRY the right to comment on Respondents' Reply evidence and argument, or in the alternative, for leave to file "surrebuttal." In either event, the effect would be the same: Respondents would close the record

on KJRY's Petition to Revoke without allowing KJRY an opportunity to address claims made by Respondents. The sole basis for relief stated in Respondents' Petition is the claim that KJRY's Rebuttal constitutes an impermissible "reply to a reply" under 49 C.F.R. § 1104.13(c).

ARGUMENT

Respondents' Petition must be denied for the simple reason that KJRY's Rebuttal does not constitute an impermissible "reply to a reply." KJRY's Rebuttal is a permitted filing for three reasons:

1. Pursuant to the Board's regulations governing the conduct of matters under modified procedure, rebuttal filings are allowed. Under 49 C.F.R. § 1112.2, "a statement responding to an opening statement is referred to as a 'reply,' and a statement responding to a reply is referred to as a 'rebuttal.' Replies to rebuttal material are not allowed." Accordingly, KJRY's rebuttal filing is not an impermissible "reply to a reply," but an appropriate rebuttal of matters contained in Respondents' Reply, and Respondents are prohibited from making any further filings in these dockets. *Soo Line RR. Co. -- Petition for Declaratory Order*, Finance Docket No. 33350, Slip op. (STB served June 23, 1997).¹
2. It has been a longstanding policy of the Board and its predecessor agency to allow the party that bears the burden of proof to close the evidentiary record through a final rebuttal submission. As KJRY filed the Petition to Revoke currently under consideration, it bears the burden of proof, and is therefore entitled to close the record. *Union Pacific Corp. et al. -- Control and Merger -- Southern Pacific Rail Corp. et al.*, Finance Docket No. 32760, Slip op.

¹ Although the Board's procedural scheduling order of June 4, 2001 did not specifically provide for KJRY to make a rebuttal filing, the regulation cited above is clear that such a filing is permitted, and the June 4 order did not specifically prohibit a rebuttal filing. Furthermore, KJRY's Rebuttal has not delayed issuance of a final decision in this matter by March 5, 2002, as provided in the Board's June 4 order.

(STB served May 22, 1996); *Wisconsin Central Ltd. -- Abandonment Exemption -- In Winnebago County, WI*, Docket No. AB-303 (Sub-No. 2X), Slip op. (ICC decided Feb. 22, 1990); *Bituminous Coal -- Hiawatha, UT to Moapa, NV; Aggregate Volume Rate on Coal -- Acco, UT to Moapa, NV*, Nos. 37038 and 37409, Slip op. (ICC decided Aug. 11, 1988).

3. Rebuttal evidence has routinely been accepted from parties filing petitions to revoke notices of exemption. *See, e.g., Indiana Northeastern RR. Co. -- Change in Operators -- Branch and St. Joseph Counties Rail Users Ass'n, Inc. in Branch County, MI*, Finance Docket No. 33760, Slip op. (STB served Sept. 1, 1999); *Bradford Industrial Rail, Inc. -- Acquisition and Operation Exemption -- Consolidated Rail Corp.*, Finance Docket No. 32240, Slip op. (ICC served Dec. 7, 1995); *Minnesota Commercial Ry., Inc. -- Trackage Rights Exemption -- Burlington Northern RR. Co.*, Finance Docket No. 31603, Slip op. (ICC decided Oct. 4, 1990).

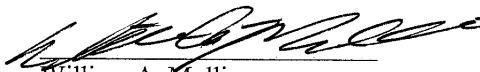
CONCLUSION

For all of the foregoing reasons, KJRY respectfully requests that the Board deny Respondents' Petition to Strike KJRY's Rebuttal filing and further deny Respondents' request to file surrebuttal.

Respectfully submitted,

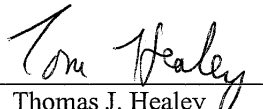
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January 30, 2002


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CERTIFICATE OF SERVICE

This is to certify that on this 30th day January 2002, I caused the foregoing "Keokuk Junction Railway Co.'s Reply to Petition to Reject of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer" in the Finance Docket No. 33995 and Finance Docket No. 33996 proceedings to be served upon counsel for all known parties of record by first class mail, postage prepaid, or by more expeditious means.


Thomas J. Healey